

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 469 / 2008

Friday, this the 20th day of March, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

I.K.Sudharma,
TGT Hindi, K.V.Kannur,
(under orders of transfer to
KV NO.2, Mangalore),
Residing at Revathy,
Elayavoor South,
Thazhe Chovva,
Kannur-18.

....Applicant

(By Advocate Mr P.V.Surendra Nath)

v.

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.
2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Bangalore.
3. The Chairman,
The Board of Governors,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.
4. The Principal,
Kendriya Vidyalaya, Kannur.
5. Smt Preethy N,
TGT Hindi, K.V.No.2,
Mangalore (under orders of
transfer to K.V.Kannur).

....Respondents

(By Advocate Mr Thomas Mathew Nellimoottil for R.1 to 4)

(By Advocate Mr M.V.Amaresan for R-5)

This application having been finally heard on 2.2.2009, the Tribunal on 20.3.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The grievance of the applicant in this O.A is against the Annexure A-1 and A-1(B) transfer orders both dated 13.6.2006 issued under para 17.4 of the "New Transfer Guidelines with effect from 14.3.2006" ("guidelines" for short) of the Kendriya Vidyalaya Sangathan transferring her from K.V., Kannur to K.V.No.2, Mangalore in public interest vice the 5th respondent, Smt Preethy N on her request with immediate effect. She is also aggrieved by the Annexure A-1(A) memorandum dated 29.7.2008 issued to her by the 1st respondent in pursuance of the following directions of this Tribunal in the earlier O.A.334/2008 filed by her impugning the aforesaid Annexure A-1 transfer order dated 13.6.2008.

"4. It is seen from the guidelines 16.2 that the teachers identified for displacement with a view to accommodate another teacher coming under PCGR category should normally be given a counselling and perhaps their choice of station is also asked for. In so far as the applicant is concerned, such a concession was not made available to her. It is stated by the counsel for the applicant that a vacancy of TGT (Hindi) is available at Kozhikode and in case her transfer out of Kannur is inevitable she may be adjusted against the existing vacancy at Kozhikode. Counsel for applicant submitted that strictly speaking the 5th respondent does not come under the priority for Kannur and one Shri Velayudhan is stated to have the priority vide Annexure A-4. It is felt appropriate that the administration should first deal with the matter before the matter comes here. As such, let this O.A be treated as a representation and the same be decided by the appropriate authority and a final decision be taken. While considering the case, the respondents may also consider the submission made by the counsel that in case the transfer is inevitable the applicant may be transferred to Kozhikode. Till such time the case is considered by the administration, the respondents shall not dislodge the applicant from the present place of posting."

According to the aforesaid Annexure A-1(A) memorandum dated 29.7.2008, the respondents have duly considered the applicant's request to cancel the Annexure A-1 transfer order dated 13.6.2008 and to modify the same by posting

her to K.V. Kozhikode but it could not be acceded to as there were no vacancies available there at present. They have denied the applicant's contention that she was transferred with mala fide intention and without the prior approval of the Chairman, KVS as required under Para 17.4 of the guidelines. On the other hand, they have stated that there was no other Teacher with longer station seniority as the applicant belonging to non CDA category available. The applicant is further aggrieved by the Annexure A-1(C) order dated 1.8.2008 relieving her with effect from 1.8.2008.

2. Para 17.4 of the guidelines as referred to in the aforesaid impugned orders is as under:

"Commissioner will be competent to make such departure from the Transfer Guidelines as he may consider necessary, with the approval of the Chairman, KVS (deleted on 15.11.2007) amended on 25.4.2006."

3. According to the applicant, the respondents have invoked the provision contained in para 17.4 in her case in an arbitrary manner as the transfer order was issued for the sole purpose of accommodating the 5th respondent in her place and there no public interest is involved in it. She has further submitted that the very purpose of Para 17.4 is to meet the unforeseen but extremely genuine administrative exigencies and not to accommodate the interest of another individual teacher and before invoking the said provisions, the Commissioner of KVS ought to have judiciously applied his mind as the same is a departure from the normal guidelines for transfer. Further, the said provisions being discretionary in nature, the Commissioner should have been guided by justifiable reasons in reaching his decision to transfer an employee and not to act at his sweet whims. He should have exhausted all other available options before invoking the said provisions as the same has to be used only as a last resort.

The applicant has also stated that the untimely transfer order has completely disrupted her family life as her husband is working as a Teacher a non-transferable job in a Panchayat High School which is more than 30 Kms away from Kannur and she herself was undergoing treatment for psychological problems and she cannot afford to live in a distant place without the care and affection of her husband. She has, therefore, submitted that the rejection of her request to cancel the transfer order by the respondents is arbitrary, illegal, unreasonable and irrational and without giving any reasons. Moreover, the 5th respondent herself was not applied for a transfer to Kannur.

4. She has, therefore, sought the following reliefs in this O.A:

- i) To declare that the Annexure A-1 transfer order is highly illegal, arbitrary, unjust, unreasonable, irrational and violative of Articles 14 and 16 of the Constitution of India and to quash the same.
- ii) To quash Annexure A-1 (A), A-1(B) and A-1(C) orders.
- iii) Declare that Para 17.4 of Annexure A-2 Transfer Guidelines is arbitrary, unjust, unreasonable, illegal and violative of Articles 14 and 16 of the Constitution of India.

5. The respondents 1 to 4 in their reply have submitted that the transfer is an incident of service and the same cannot be interfered with, on the ground of domestic problems as contended by the applicant. They have referred to the All India Transfer Liability clause as contained in para 1.1 of the guidelines which reads as under:

"All employees of the KVS are liable to be transferred and posted anywhere in India, at any time, and for any period, as requirements of public service and of the Sangathan may dictate. Transfers and posting are a right of the Sangathan, which it would endeavour to exercise in the best interest of the students, with due regard to the principles of equity and transparency vis-a-vis its employees."

Further, the Para 17.4 of the guidelines give power to the Commissioner to depart from the general guidelines of transfer and it has been invoked in the

case of the applicant *"to accommodate the 5th respondent, Smt Preethi N TGT (Hindi) of KV No.2 Mangalore, who has requested for her transfer under Para 17.4 of the transfer guidelines and accordingly the applicant was relieved from KV Kannur as per rules."* They have also submitted that the Commissioner of KVS has applied his mind judiciously before the transfer order was issued and it was done with the prior approval of the Chairman, KVS.

6. They have also relied upon the (i) orders of this Tribunal in O.A.874/1999 – **Brijesh Bhatt v. Union of India & others** – and wherein it was held as under:

".. the applicant is having a job which is a transferable as per Rule 49 of the Education Code according to which employees of Kendriya Vidyalaya Sangathan are liable to be transferred anywhere in India. Transfer of the applicant is therefore as per rule. In view of this, the O.A filed by the applicant is not maintainable at all and is liable to be dismissed. The interim stay granted to the applicant is also liable to be vacated."

and (ii) the judgment of the Apex Court in **Kendriya Vidyalaya Sangathan v. Anusuiya Pathak** wherein it was held as under:

"Merely because the respondent is a lady teacher does not mean that for administrative reasons, orders of transfer cannot be passed. We should have expected a teacher to show some sense of responsibility. But the fact remains that there is none as far as the respondent is concerned. As we have already mentioned, orders of transfer were passed on 22nd June 2001 and 07th May 2002 the High Court stayed that transfer. This order of the High Court was stayed by this Court on 29th July 2002. Till today, the respondent has not joined the new station to which she has been transferred. We see no reason to interfere with the order of transfer. It is only a Government Organisation which can tolerate non-implementation of its orders."

7. The applicant has filed a rejoinder refuting the contentions of the respondents and reiterated the grounds taken by her in the O.A for challenging the impugned orders.

8. There was no reply from the 5th respondent.

9. I have heard Shri P.V.Surendranath, counsel for the applicant and Shri Thomas Mathew Nellimoottil counsel for respondents 1 to 4. The main contention of the applicant's counsel is that the Annexure A-1 transfer order issued under para 17.4 of the Guidelines is illegal, arbitrary, unjust, unreasonable, irrational and violation of Articles 14 and 16 of the Constitution of India. The said contention has already been considered by this Tribunal in O.A.126/2008 – **M.Divakaran V. The Commissioner, KVS & others** and held that the power of the Commissioner under Para 17.4 cannot be held to be arbitrary. Paras 14 and 15 of the said order are relevant and they are extracted below:

"14. Para 17.4 no doubt, provides wide powers to the Commissioner. Can the same be held to be arbitrary. Answer to this question is perhaps in negative, for, a look at the provisions would go to show that the power vested with the Commissioner is not that absolute under this para, for, Commissioner will be competent to make such departure from the transfer guidelines as he may consider necessary with the approval of the Chairman, KVS. Thus, para 17.4 ipso fact does not give absolute power to the Commissioner. When there is a check provided by conferment of the discretionary authority not to one individual but to a body of men, requiring final action to be taken, the absoluteness of the discretion suffers a dent. In this connection, it is worth referring to a decision by the Apex Court, which, while discussing about administrative action with reference to absolute authority, in the case of *Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441, held as under:

"427. ... A further check in that limited sphere is provided by the conferment of the discretionary authority not to one individual but to a body of men, requiring the final decision to be taken after full interaction and effective consultation between themselves, to ensure projection of all likely points of view and procuring the element of plurality in the final decision with the benefit of the collective wisdom of all those involved in the process. The conferment of this discretionary authority in the highest functionaries is a further check in the same direction. The constitutional scheme excludes the scope of absolute power in any one individual. Such a construction of the provisions also, therefore, matches the constitutional scheme and the constitutional purpose for which these provisions were enacted."

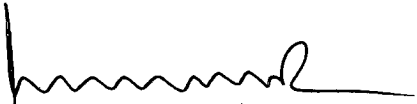
15. To reiterate, Chairman of KVS is the highest authority and the Commissioner, the next highest. If the latter, in respect of any case, wants to deviate from the guidelines of transfer, he has no independent

authority, as he has to have the approval of the Chairman. The concentration of absolute power and consequent discretion of the Commissioner, by virtue of the above condition of approval by the Chairman, here gets thoroughly diluted. Thus, any decision taken would be as a result of collective wisdom. Thus, the powers under para 17.4 cannot be branded as an absolute power vested in the Commissioner, in its strict sense."

10. According to the respondents, the 5th respondent was transferred from K.V.No.2, Mangalore to K.V. Kannur with the prior approval of the Chairman, K.V.S under Para 17.4 of the transfer guidelines keeping the merit of her case in mind. As far as the applicant is concerned, there was no other Teacher with longer station seniority belonging to non-CDA category available at K.V. Kannur.

11. From the above position, it is seen that the transfer and postings of the applicant and the 5th Respondent were in accordance with the "New Transfer Guidelines" which came into effect from 14.3.2006". I, therefore, do not intend to interfere with the impugned orders. Resultantly the O.A is dismissed.

12. There shall be no order as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER